IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 246 of 1997

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANDABHAI MAGANBHAI - Applicant(s)

Versus

NILAMBEN CHAMPAKLAL - Opponent(s)

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Appearance :
MR DM THAKKAR for M/S THAKKAR ASSOC. for Petitioner
MR PS CHAMPANERI for Respondent

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 19/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 8th October, 1996 passed by the learned *Extra* Assistant Judge, Surendranagar in Regular Civil Appeal No. 72 of 1994, the respondent-defendant in Civil Suit No. 11 of 1990, has preferred the present Revision Application under Section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The petitioner-defendant is a tenant in a room in a building known as '*Sarvodaya Vadi*' situated at Surendranagar for a monthly rent of Rs. 16/=. The suit building was purchased by the respondent-plaintiff from its erstwhile owner by a registered sale deed dated 17th July, 1980 [*Exh. 25*]. The plaintiff instituted Civil Suit No. 11 of 1990 in the Court of learned Civil Judge [SD], Surendranagar for recovery of possession of the suit premises and the amount of rent due on the ground that the defendant was the tenant in default and that he was in arrears of rent since 1st February, 1978. The plaintiff had purchased right to recover the amount of rent due. The defendant was served with a notice of demand dated 27th September, 1989 [*Exh. 26*] as envisaged by Section 12 (2) of the Rent Act. The defendant did not reply to the said notice. *Therefore*, the suit.

The suit was contested by the defendant vide written statement Exh. 14. According to the defendant, in answer to the suit notice dated 28th September, 1989, the defendant had tendered the rent to the plaintiff but the plaintiff refused to accept the said tender.

The learned Civil Judge, by judgment and order dated

29th October, 1994, dismissed the suit for possession and passed decree for the amount of rent due. Feeling aggrieved, the defendant preferred Civil Appeal No. 11 of 1990 in the Court of learned District Judge, Surendranagar. The learned *Extra* Assistant Judge allowed the Appeal and passed decree for eviction. Therefore, the present Revision Application.

From the evidence on record, it is established that the defendant was a tenant in the suit room for a monthly rent of Rs. 16/= and that he was in arrears of rent since 1st February, 1978, as alleged. The defendant did receive the suit notice Exh.26. The defendant did not respond to the suit notice. Though in the written statement, he did take a *plea* that in answer to the suit notice he had tendered the amount of rent due but the same was not proved by evidence on record. Evidently the defendant had received the suit notice but he did not pay the amount of rent due within one month from the date of the suit notice. It is also proved that the defendant did not raise the dispute as to the standard rent within one month from the date of the receipt of the notice and until he filed the written statement in the suit. The matter was clearly covered by Section 12 (3)(a) of the Rent Act. The decree for eviction was, therefore, inevitable. The lower appellate Court has correctly appreciated the evidence and

passed decree for eviction against the defendant.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. *Interim* relief stands vacated.

At the request of the learned advocate Mr. Thakkar, it is directed that the decree for eviction passed against the defendant shall not be executed till **31st December, 2005** on condition that the defendant shall, *within* fifteen days from today, give undertaking to this Court in usual terms. Copy of the undertaking shall be furnished to the learned advocate Mr. Champaneri. It is further directed that in the event the defendant fails to hand over vacant possession of the suit room to the landlord on or before 31st December, 2005; commencing from **1st January, 2006**, the defendant shall be liable to pay occupancy fee of Rs. 250/= per month until the plaintiff recovers the vacant possession of the suit room. Such occupancy fee shall be paid by the 10th day of the next succeeding month.

{Miss R.M Doshit, J.}

*Prakash**